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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,003	03/24/2004	Felix Raffalt	40124/02801	4653
7590 11/17/2005 Fay Kaplun & Marcin, LLP 150 Broadway, Suite 702 New York, NY 10038			EXAMINER RAEVIS, ROBERT R	
			ART UNIT 2856	PAPER NUMBER

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/808,003

Applicant(s)

RAFFALT, FELIX

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "band pass filter, band elimination filter, signal blanking means, level logarithmizer" (of claim 25) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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As to claim 1, is the "a level detection sensor" somehow a part of at least one of the "vibration level switches"?

As to claim 2, is "the vibration level switch" (lines 1-2) one of the "switches" (of claim 1, line 1), or is it the "a level detection sensor" (of claim 1)? Also, "the memory" lacks antecedent basis.

As to claim 3, "microprocessor" lacks antecedent basis. Also, this claim refers to "parameters", (line 2) while claim 1 calls for "at least one parameter". Thus, "the parameters" also lacks antecedent basis.

As to claim 4, "the sensor mechanism" and "the electronics" lack antecedent basis. Also, does "the operating test" (line 1) somehow preclude other tests? After all, base claim 1 does refer to a plurality of "operating tests" (line 1 of claim 1).

As to claim 5, delete the ")" (line 4). Also, how do both the "detection crystal" and "excitation crystal" comprise the same vibration resonator? Doesn't the vibration resonator 1 comprise the piezo detector crystal 2 and the excitation crystal 4 in Figure 1?

As to claim 11, "the microprocessor" and "the memory" lack antecedent basis.

As to claim 13, "first allowance band" lacks antecedent basis.

As to claim 18, is "the sensor of the level switch" (line 2) related to the "vibration level switches" (line 1) in some fashion? Otherwise, "the sensor of the level switch" lacks antecedent basis.

As to claim 19, "the operating test" (line 2 from last) lacks antecedent basis.

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As to claim 24, "first allowance bands" lacks antecedent basis. Should this claim somehow depend upon claim 24? If not, to what extent does this claim include a first allowance band?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4,5,6,7,12,13,14,15,16,17,19,20,22,23,24,25,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silvermetz et al.

Silvermetz et al teach (col. 5, lines 59+, continuing on to col. 6, line 29) a method for carrying out operating tests of a vibration level sensor, whereby a resonator of a level detection sensor is excited by an oscillation exciting feed back circuit to oscillate, whereby at least one excitation parameter of a plurality of signal process blocks 40, 50 of the feedback circuit is varied (see element 72 which changes the filter 50), and the resulting oscillation change is detected (col. 6, lines 4-5) by circuit 60 which ultimately provides for a visible/audible signal indicating if the system is operational.

Silvermetz does not expressly state that there is a comparison with datasets that comprise data of a failure free system.

As to claims 1,4,5,6,7,12,13,16,17,19,20,22,23,24,25,26, it would have been obvious to compare the output of circuit with data of a failure free system, as one of ordinary skill would recognize that the output signal requires a reference to determine if the system is operational.

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As to claim 3, it is known to operate "automatic integrity testing" (col. 6, line 12) with computer system, suggestive of microprocessor control.

As to claims 14 and 15 note "manually or automatically" (col. 5, lines 60-61).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nemirow (element 15) and Wilson et al (element 31) each employs a phase detector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RAEVIS